

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LETICIA LUCERO,

Plaintiff,

v.

CENLAR F.S.B., et al.,

Defendants.

No.: 2:13-cv-00602

ANSWER TO AMENDED COMPLAINT BY
DEFENDANT BAYVIEW LOAN
SERVICING, LLC

COMES NOW defendant Bayview Loan Servicing, LLC ("Bayview") and answers Plaintiff's First Amended Complaint¹ as follows:

I. INTRODUCTION

1. The First Amended Complaint speaks for itself, no response is required.

II. JURISDICTION

2. Admit that the subject real property is located within this district. To the extent this pleading requires a legal conclusion, no response is required.

III. PARTIES, RELATIONSHIPS, & LIABILITIES

3. Bayview is without knowledge sufficient to admit or deny the allegations, and denies same.

4. Bayview is without knowledge sufficient to admit or deny the allegations, and denies

¹ Dkt # 34 (Plaintiff's FAC)
Answer -1 -
MH #WA13-7452

1 same.

2 5. Admit that Plaintiff sought a loan modification through Bayview. Bayview is without
3 knowledge sufficient to admit or deny the remaining allegations, and denies same.

4 6. The Deed of Trust speaks for itself. Bayview is without knowledge sufficient to admit or
5 deny the remaining allegations, and denies same.

6 7. Bayview is a limited liability company organized under the laws of the State of Delaware.
7 Admit that Bayview services mortgages in default. Admit that Bayview uses phone and mail to
8 contact borrowers in the State of Washington. To the extent this pleading requires a legal
9 conclusion as to “debt collector”, no response is required.
10

11 8. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
12 same.

13 9. This pleading asks for a legal conclusion, no response is required.

14 10. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
15 same.

16 11. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
17 same.
18

19 12. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
20 same.

21 13. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
22 same.
23

24 **IV. FACTS CONCERNING NWTs’ COMMENCEMENT OF NONJUDICIAL**
25 **FORECLOSURE OF PLAINTIFF’S HOMESTEAD**

26 14. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
27 same.

28 15. Deny that Plaintiff submitted a Qualified Written Request to Bayview.

1 16. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
2 same.

3 17. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
4 same.

5 18. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
6 same.

7 **V. FACTS RELATING TO FORECLOSURE FAIRNESS ACT MEDIATION**

8 19. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
9 same.

10 20. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
11 same.

12 21. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
13 same.

14 22. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
15 same.

16 23. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
17 same.

18 24. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
19 same.

20 25. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
21 same.

22 26. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
23 same.

24 27. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
25 same.

26 28. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
27 same.
28

29. Bayview is without knowledge sufficient to admit or deny the allegations, and denies same.

30. Bayview is without knowledge sufficient to admit or deny the allegations, and denies same.

31. Bayview is without knowledge sufficient to admit or deny the allegations, and denies same.

**VI. CONCURRENT OR DUAL REPRESENTATION WHERE RCO IS COUNSEL
FOR NWTS AND LOAN SERVICERS**

32. Bayview is without knowledge sufficient to admit or deny the allegations, and denies same.

33. Bayview is without knowledge sufficient to admit or deny the allegations, and denies same.

34. Bayview is without knowledge sufficient to admit or deny the allegations, and denies same.

35. This pleading asks for a legal conclusion, no response is required.

36. This pleading asks for a legal conclusion, no response is required.

VII. CAUSES OF ACTION
**COUNT ONE: FAILURE TO MATERIALLY COMPLY WITH THE PROVISIONS OF
THE DEED OF TRUST ACT RCW 61.24. ET. SEQ.**

37. Bayview is without knowledge sufficient to admit or deny the allegations, and denies same.

38. Bayview is without knowledge sufficient to admit or deny the allegations, and denies same.

39. Bayview is without knowledge sufficient to admit or deny the allegations, and denies same.

40. Bayview is without knowledge sufficient to admit or deny the allegations, and denies same.

41. Bayview is without knowledge sufficient to admit or deny the allegations, and denies same.

42. Bayview is without knowledge sufficient to admit or deny the allegations, and denies same.

43. Bayview is without knowledge sufficient to admit or deny the allegations, and denies same.

44. Bayview is without knowledge sufficient to admit or deny the allegations, and denies same.

45. Deny.

46. Bayview is without knowledge sufficient to admit or deny the allegations, and denies same.

COUNT TWO: DEFENDANTS' CONDUCT VIOLATED RESPA

47. Deny.

48. Deny that Plaintiff submitted a Qualified Written Request to Bayview. To the extent this pleading asks for a legal conclusion, no response is required.

49. Deny that Plaintiff submitted a Qualified Written Request to Bayview. To the extent this pleading asks for a legal conclusion, no response is required.

50. Deny.

51. Deny.

COUNT THREE: DEFENDANTS VIOLATED FEDERAL DEBT COLLECTION

PRACTICE ACT ("FDCPA")

52. Deny.

53. Bayview is without knowledge sufficient to admit or deny the allegations, and denies same. To the extent this pleading asks for a legal conclusion, no response is required.

54. Admit that Bayview contacted Plaintiff in December of 2012 in connection with her loan. To the extent this pleading characterizes the contacts as collection in nature, it requests a legal conclusion, and no response is required.

1 55. Bayview is without knowledge sufficient to admit or deny the allegations as to Plaintiff's
2 successful completion of the HAMP trial period. The letter from Bayview dated February 7,
3 2013 speaks for itself.

4 56. The "Cease and Desist" letter dated February 13, 2013 to Bayview speaks for itself.
5 Admit it was received by Bayview.

6 57. The HAMP Agreement speaks for itself. Deny that Bayview has done any reporting to
7 the credit bureaus regarding Plaintiff's loan.

8 58. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
9 same.

10 59. This pleading asks for a legal conclusion, no response is required. To the extent this
11 pleading alleges liability, it is denied.

12 60. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
13 same.

14 61. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
15 same.

16 62. Deny.

17 **COUNT FOUR: DEFENDANTS VIOLATED WASHINGTON CONSUMER**
18 **PROTECTION ACT. RCW 19.86 ET SEQ.**

19 63. Deny.

20 64. Deny.

21 65. Deny. To the extent this pleading asks for a legal conclusion, no response is required.

22 66. Deny. To the extent this pleading asks for a legal conclusion, no response is required.

23 67. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
24 same.

25 68. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
26 same.

27 69. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
28 same.

1 70. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
2 same.

3 71. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
4 same.

5 72. Deny.

6 **COUNT FIVE: NOTARY PUBLIC NANCY K. MORRIS COMMITTED FRAUD**

7 73. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
8 same.

9 74. This pleading asks for a legal conclusion, no response is required.

10 75. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
11 same.

12 76. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
13 same.

14 77. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
15 same.

16 78. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
17 same.

18 **COUNT SIX: FRAUD BY DEFENDANT JENNIFER DOBRON**

19 79. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
20 same.

21 80. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
22 same.

23 81. Bayview is without knowledge sufficient to admit or deny the allegations, and denies
24 same.

25 **AFFIRMATIVE DEFENSES**

26 1. Plaintiff has failed to state a claim upon which relief can be granted.

27 2. Plaintiff's claims are barred by the statute of limitations.

28 2. Plaintiff's claims are barred by application of doctrines of waiver, laches, and/or estoppel.

3. Any purported damages suffered by the Plaintiffs were the result of acts or omissions of third persons over whom Defendant had neither control nor responsibility.

4. Plaintiff has failed to plead fraud or misrepresentation with particularity.

5. Plaintiff's damages were caused by their own actions or inaction, or they were contributory negligent in causing their alleged damages.

6. Plaintiff has failed to mitigate their damages.

7. The Plaintiff is being unjustly enriched by their continued actions of remaining on the real property without payment.

8. Defendant(s) expressly reserves the right to add additional affirmative defenses as it determines to be appropriate at any time in the future.

PRAYER FOR RELIEF

Having fully answered each and every allegation contained in Plaintiffs' Complaint, stated its Affirmative Defenses, Bayview prays the Court grant the following relief:

1. Dismiss Plaintiff's Complaint with prejudice;

2. Enter an award against Plaintiffs and in favor of Bayview for all costs, expenses, and reasonable attorney's fees incurred in defending against this action to the extent allowed by law;

3. For such further relief as the Court may determine to be just, equitable, or fair.

Dated: February 24, 2014

MCCARTHY & HOLTHUS, LLP

/s/ Joseph Ward McIntosh

Joseph Ward McIntosh, Esq. WSBA #39470

Attorney for Bayview

CERTIFICATE OF SERVICE

Pursuant to RCW 9.A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 24th day of February, 2014, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

Attorneys for Plaintiff:

Ha Thu Dao
Grand Central Law, PLLC
787 Maynard Avenue S.
Seattle, WA 98104
hadoajd@gmail.com

Vincente Omar Barraza
Barraza Law, PLLC
14249-F Ambaum Blvd SW
Burien, WA 98166
omar@barrazalaw.com

Attorneys for Defendants RCO Legal, PS and Northwest Trustee Services:

Heidi Buck Morrison
Lauren Davidson Humphreys
RCO Legal, P.S.
13555 SE 36th St., Suite 300
Bellevue, Washington 98006
hbuckmorrison@rcolegal.com
lhumphreys@rcolegal.com

Attorneys for Defendants Cenlar, FSB, Mortgage Electronic Registration Systems, Inc., Jennifer Dobron, and Nancy K. Morris:

Renee M. Parker
Wright, Finlay, & Zak, LLP
46665 MacArthur Court, Suite 200
Newport Beach, CA 92660
rmparker@wrightlegal.net

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1 and I hereby certify that I have sent via first class mail the document to the following non-
2 CM/ECF participants:

3 N/A

4 Executed on the 24th day of February, 2014, in Seattle, Washington.

5 /s/ Joel Springer
6 Joel Springer
7 Legal Assistant
8 McCarthy & Holthus LLP
9 19735 10th Ave. NE, Suite N200
10 Poulsbo, WA 98370
11 P: 206-319-9100; F: 206-780-6862
12 jspringer@mccarthyholthus.com
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